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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/532,491

04/25/2005

Joachim Guettinger

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4359

2119 7590 04/02/2007
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EXAMINER

PRESTON, ERIK D

ART UNIT

PAPER NUMBER

2834

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/532,491

Applicant(s)

GUETTINGER ET AL.

Examiner

Erik D. Preston

Art Unit

2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 13, 15, 16, 23, 27, 29, 30, 32 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 13, 15, 16, 23, 27, 29, 32 and 34-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/29/2007 has been entered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 11,13,15,16,23,32 & 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kluck (US 4596941, supplied by applicant) in view of Watson (US 3094594, previously cited).

With respect to claim 11, Kluck teaches an electrical machine comprising: A housing for a machine, the housing including a housing body (Col. 2, Lines 36-38) and a housing cap (Fig. 1, #10), a brush holder (Fig. 1, #13 & 14) disposed in the housing for holding brushes (Fig. 1, #11 & 12), and an elastic region (Fig. 1, #24) in the housing cap which enables positioning of the brush holder relative to the commutator from outside the housing (Col. 3, Lines 54-61), wherein the elastic region is disposed and secured in the housing cap, and wherein a seal is achieved between the elastic region and the

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housing cap, but it does not explicitly teach the elastic region being an independently formed elastomer element.

However, Kluck teaches that the housing cap is made of a plastic (Col. 1, Lines 54-58) that can flex, and Watson teaches independently formed elastic regions (Fig. 1, #23) for use in an electric device. It would have been obvious to one of ordinary skill in the art at the time of the invention to: (1) form the elastic region of Kluck from an elastomeric plastic since an elastomeric plastic would fulfill the requirements of Kluck, and (2) form the elastic region of Kluck independently such as is taught by Watson because it provides an equivalent and equally well-known means for providing an elastic element for an electrical component housing that is simple in design and easy to manufacture (Col. 1, Lines 10-33).

It also would have been obvious to: (1) form the elastic region from an elastomer since it has been held that one of ordinary skill in the art at the time the invention would choose a suitable and desirable material, because it would be within the general skill of a worker in the art to select a material on the basis of its suitability for the intended use as a matter of obvious design choice (*In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960)), and (2) independently form the elastic region of Kluck in the manner as taught by Watson since it has been held that making a one piece component into two separate pieces is not considered to be patentably distinct (*In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)).

With respect to claim 13, Kluck in view of Watson teaches the machine of claim 11, wherein the elastomer element secured in the housing cap is cylindrical in shape.

With respect to claim 15, Kluck in view of Watson teaches the machine of claim 11, wherein the elastomer element is an elastomer diaphragm.

With respect to claims 16 & 35, Kluck in view of Watson teaches the machine of claim 13, Watson teaches that the elastic element that is provided with a circumferential fastening slot (near Fig. 1, #47) that is located on the part of the elastic element that meets a housing (Fig. 1, #21), and Kluck teaches that the elastic element meets its housing at an outer circumferential region, thereby achieving a double seal (as seen in Watson, Fig. 1) between the elastomer element and the housing cap.

With respect to claim 23, Kluck in view of Watson teaches the machine of claim 11, and Watson teaches that the electrical machine is watertight (Col. 1, Lines 37-42).

With respect to claim 32, Kluck in view of Watson teaches the machine of claim 11, wherein the brush holder is disposed in the housing. The limitation of the brush holder being disposed by way of a slight press fit is a method limitation given little patentable weight in an apparatus claim.

With respect to claims 34, Kluck in view of Watson teaches the machine of claim 11, wherein there is a seal between the housing body and the housing cap (Kluck, Col. 1, Lines 37-42. Since the entire machine is water tight, there is a seal inherently formed between the housing body and the housing cap).

With respect to claim 36, Kluck in view of Watson teaches the machine of claim 11, and the recitation of the elastomer element being welded to the housing cap is a method limitation given little patentable weight in an apparatus claim.

Claims 27 & 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi (US 2002/0175573, previously cited) in view of Kluck (US 4596941, supplied by applicant) in view of Watson (US 3094594, previously cited). Hayashi teaches a windshield wiper motor (Fig. 15, #1) for use in a vehicle, but it does not teach the brush holder and elastic region of claim 11. However, Kluck in view of Watson teaches the brush holder and elastic region of claim 11. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the brush holder of Hayashi in view of the brush holder and elastic region as taught by Kluck and Watson because it provides a means for simply assembling an electric machine without requiring any tools (Kluck, Col. 1, Lines 37-42).

Response to Arguments

Applicant's arguments with respect to claims 11,13,15,16,23,27,29,32 & 34-36 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erik D. Preston whose telephone number is (571)272-8393. The examiner can normally be reached on Monday through Friday 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darren Schuberg can be reached on (571)272-2044. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



03/19/2007



BURTON MULLINS
PRIMARY EXAMINER